

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CSX TRANSPORTATION, INC.,
individually and on behalf of NORFOLK
& PORTSMOUTH BELT LINE
RAILROAD COMPANY,

Plaintiff,

v.

NORFOLK SOUTHERN RAILWAY
COMPANY, *et al.*,

Defendants.

Case No. 2:18-cv-530

**MEMORANDUM IN SUPPORT OF DEFENDANT NORFOLK SOUTHERN
RAILWAY COMPANY’S MOTION TO FILE DOCUMENTS UNDER SEAL**

Defendant Norfolk Southern Railway Company (“NSR”), by counsel, states as follows in support of its Motion to File Documents Under Seal. Defendant seeks to file the following documents under seal: Defendant’s unredacted Memorandum in Support of Motion for Summary Judgment, and the following Exhibits to Defendant’s Motion and Memorandum in Support of Motion for Summary Judgment: Exhibits 2, 5, 7, 8, 9, 10, 10A, 11, 13, 14, 15, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 80, 81, 82, 86, 87, 88, 89, 93, 94, 95, 96, 97, 98, 99, 100, 102, 103, 105, 106, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, and 119. On October 29, 2019, the Court

entered a Stipulated Protective Order, which governs the parties' use of confidential information produced in this case. ECF No. 79.

1. Paragraph 2 of the Stipulated Protective Order defines "Protected Material" as material containing information that "must or may be protected from disclosure," including material designated "CONFIDENTIAL" and "CONFIDENTIAL – ATTORNEYS' EYES ONLY." ECF No. 79, ¶ 2.

2. Defendant's unredacted Memorandum in Support of Motion for Summary Judgment and Exhibits 2, 5, 7, 8, 11, 13, 14, 15, 17, 19, 20, 23, 24, 25, 26, 28, 30, 32, 33, 34, 35, 36, 37, 38, 40-47, 49, 50-55, 59, 60, 61, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 74, 77, 78, 80, 81, 86, 87, 88, 93, 95, 96, 97, 100, 102, 103, 105, 106, 111, 112, 114, 116, 117, 118 and 119 refer or cite to documents, or contain testimony, that have or has been designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" by Plaintiff CSX Transportation, Inc. ("CSXT") under the Stipulated Protective Order.

3. These documents and the testimony designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" contain highly confidential and sensitive information relating to CSXT's transportation and shipping practices, business strategy, internal communications, and other highly confidential, proprietary, and sensitive business information, release of which would harm CSXT.

4. These documents and the designated deposition testimony are "Protected Material" under the Stipulated Protective Order. ECF No. 79, ¶ 2.

5. The Stipulated Protective Order requires Defendants to file these documents and the designated deposition testimony under seal. ECF No. 79, ¶ 16.

6. Defendant's unredacted Memorandum in Support of Motion for Summary Judgment and Exhibits 2, 9, 10, 10A, 17, 27, 29, 32, 48, 62, 75, 76, 113, and 115 refer or cite to documents, or contain testimony, that have or has been designated as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" by Defendant Norfolk Southern Railway Company ("NSR") under the Stipulated Protective Order.

7. These documents and the deposition testimony designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" contain highly confidential and sensitive information relating to NSR's transportation and shipping practices, business strategy, internal communications, and other highly confidential, proprietary, and sensitive business information, release of which would harm NSR.

8. These documents and the deposition testimony are "Protected Material" under the Stipulated Protective Order. ECF No. 79, ¶ 2.

9. The Stipulated Protective Order requires Defendants to file these documents and designated testimony under seal. ECF No. 79, ¶ 16.

10. Defendant's unredacted Memorandum in Support of Motion for Summary Judgment and Exhibits 82, 94, 98, 99, 108, 109, and 113, refer or cite to documents, or contain testimony, that have been designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" by Defendant Norfolk & Portsmouth Beltline Railroad Company ("NPBL") under the Stipulated Protective Order.

11. These documents testimony designated "CONFIDENTIAL," "HIGHLY CONFIDENTIAL," or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" contain highly

confidential and sensitive information relating to NPBL's transportation and shipping practices, business strategy, internal communications, and other highly confidential, proprietary, and sensitive business information, release of which would harm NPBL.

12. These documents and deposition testimony are "Protected Material" under the Stipulated Protective Order. ECF No. 79, ¶ 2.

13. The Stipulated Protective Order requires Defendants to file these documents under seal. ECF No. 79, ¶ 16.

For the foregoing reasons, Defendant requests that the Court enter the proposed order attached to the Motion to Seal as **Exhibit A** authorizing and directing Defendant to file the unredacted Memorandum in Support of Motion for Summary Judgment and : Exhibits 2, 5, 7, 8, 9, 10, 10A, 11, 13, 14, 15, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 36, 37, 38, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 59, 60, 61, 62, 63, 64, 65, 67, 68, 69, 70, 71, 72, 74, 75, 76, 77, 78, 80, 81, 82, 86, 87, 88, 89, 93, 94, 95, 96, 97, 98, 99, 100, 102, 103, 105, 106, 108, 109, 111, 112, 113, 114, 115, 116, 117, 118, and 119 under seal, and directing the Clerk of Court to maintain such exhibits under seal pending further order of the Court.

Defendant also files herewith a Notice of Sealing Motion as required by Local Rule 5(C). Defendant waives oral argument on this Motion.

Dated: April 12, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2021, I electronically filed a copy of the foregoing with the Clerk of Court using the CM/ECF system, which sent a notification of such filing (NEF) to the registered participants as identified on the NEF to receive electronic service, including:

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